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February 7, 1997

William F. Caton, Acting Secretary
Federal Communications Commission
Washington, D.C. 20554

Re: MM Docket Nos. 91-221 and 87-78
Review of the Commission's Regulations Governing Television Broadcasting

Dear Mr. Caton:

On behalf of our client, Shockley Communications Corporation, licensee of Wisconsin Stations WKOW-TV, Madison, WAOW-TV, Wausau, WXOW-TV, LaCrosse, and WQOW-TV, Eau Claire, transmitted herewith for filing are an original and nine (9) copies of its **"Comments of Shockley Communications Corporation"** in response to the Second Further Notice of Proposed Rule Making in the above-referenced Dockets.

Please direct any communications or inquiries concerning this matter to the undersigned.

Very truly yours,

Jerold L. Jacobs

Jerold L. Jacobs

Enc.

cc: Roy J. Stewart, Chief
Clay Pendarvis, Chief
Alan Baughcum
Charles Logan **(All FCC - By Hand) (w/enc.)**

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Review of the Commission's Regulations	)	
Governing Television Broadcasting	)	MM Docket No. 91-221
	)	
Television Satellite Stations	)	
Review of Policy and Rules	)	MM Docket No. 87-7

TO: The Commission

COMMENTS OF SHOCKLEY COMMUNICATIONS CORPORATION

SHOCKLEY COMMUNICATIONS CORPORATION ("SCC"), licensee of Wisconsin Stations WKOW-TV, Madison, WAOW-TV, Wausau, WXOW-TV, LaCrosse, and WQOW-TV, Eau Claire, by its attorneys, hereby comments on the Commission's proposals for new or revised ownership rules in the areas of TV duopoly, one-to-a-market, and the grandfathering of local marketing agreements ("LMA's"), which are discussed in the Second Further Notice of Proposed Rule Making in MM Docket No. 91-221 ("Second Notice"), released November 7, 1996. In support whereof, the following is shown:

I. Existing LMA's Should Be Grandfathered For the Duration of Their Initial Terms

1. TV LMA's or time brokerage agreements are analyzed in ¶¶'s 80-91 of the Second Notice. SCC urges that a TV LMA should be treated as "grandfathered" for the full duration of its initial term, if the LMA was signed on or before the November 5, 1996 proposed grandfathering date in this proceeding, regardless of when operations under the LMA actually began. The reason is simply that the parties' reliance on the Commission's pre-November 1996 laissez faire policy for TV LMA's should not be disrupted until a reasonable period of time has elapsed.

2. The Commission has proposed that grandfathering be measured as of when agreements were "entered into," and SCC believes that the agreement's signature date -- not its actual implementation date (which could be months later) -- marks the logical point from which reasonable reliance should be measured. This interpretation of "entered into" is supported by Infinity Holding Corp. of Orlando, FCC 96-494, released December 26, 1996, in which the Commission held, by implication, that an LMA which was signed prior to November 5, 1996 would be treated as "grandfathered," even though the station was unbuilt as of November 5.

3. As to transferability and renewability of LMA's (¶91), SCC recommends that grandfathered LMA's should be permitted to continue in force under a new station owner until the original term of the LMA expires or for five (5) years, whichever is less. In this situation, the new station owner could not have relied upon the Commission's pre-November 1996 policies, but the time broker did rely and, therefore, is entitled to a reasonable period of time for continued implementation of the LMA. However, SCC believes that grandfathered LMA's should not be renewed, if they would otherwise violate the Commission's new local ownership rules, unless the renewal itself took place before November 5, 1996.

4. Although SCC is largely supportive of the LMA concept as a means of assisting emerging or financially troubled TV operations, it remains concerned that the LMA mechanism should not be used to evade compliance with the Commission's ownership rules. Station owners should not be allowed to shirk their management and public interest responsibilities, and the Commission should adopt safeguards to ensure that LMA's are not mere shells disguising unauthorized transfers of control.

II. The "Satellite" Exemption From the Duopoly Rules Should be Retained

5. SCC fully supports retention of the "satellite" station exemption under the Commission's new duopoly rules (¶37 of the Second Notice). Under that exemption, satellite stations will continue not being counted as separate stations in determining whether there is prohibited multiple ownership within a DMA or prohibited Grade A contour overlap. SCC believes that the exemption is fully warranted because satellite stations are not truly independent "voices" in a market since they substantially or totally retransmit the programming of their parent stations.

III. SCC Favors Lenient Duopoly Treatment for UHF Stations

6. In ¶33 of the Second Notice, the Commission asks whether it should distinguish between UHF and VHF stations in determining whether to allow common ownership of stations in the same market. SCC recommends that common ownership of UHF stations in the same DMA be treated more favorably than that of non-UHF stations, even if a UHF station is a network affiliate. Specifically, SCC believes that the Commission should be receptive to TV duopoly requests involving two UHF stations or one UHF and one VHF station in the same market. However, SCC is steadfastly opposed to duopoly waivers involving two VHF stations in the same market.

7. Three of SCC's ABC-affiliated TV stations are UHF stations,[1] which makes SCC especially knowledgeable about the continued technical disadvantage of UHF versus VHF

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[1] The channel assignments of SCC's stations are: WKOW-TV, Chan. 27, WXOW-TV, Chan. 19, WQOW-TV, Chan. 18, and WAOW-TV, Chan. 9.

stations in signal propagation. Thus, SCC urges that where there is population density throughout a DMA, UHF stations remain at a technical disadvantage when competing for audience with VHF stations. However, where populations are sparsely located throughout a DMA, the technical disadvantage is largely offset by geography. Hence, in densely populated DMA's, SCC believes that a case-by-case waiver analysis should be used (not an across-the-board exemption) to determine whether a UHF/UHF or UHF/VHF duopoly waiver is appropriate -- along the lines of Note 7 to §73.3555 (as intimated by the discussion in ¶34 of the Second Notice). Waiver criteria should include the presence of substantial independent competing media in the DMA and any special disadvantages that the specific UHF stations in the transaction suffer, such as small audience share, limited area of signal carriage, or lack of cable penetration (if any). See ¶39 of the Second Notice.

IV. The "Failed Station" Waiver Rationale Should Apply to Duopoly Waivers

8. As suggested in ¶41 of the Second Notice, SCC recommends that "failed" station status should be a presumptive ground for a duopoly waiver (despite Grade A overlap or presence in the same DMA), as well as grounds for a one-to-a-market waiver. In this connection, SCC recommends that the Commission should overrule Louis C.DeArias, 11 FCC Rcd 3662 (1996), which held that, under certain circumstances, the Commission would look behind court proceedings to seek further evidence of an applicant's financial failure. A station in bankruptcy or receivership should be considered ipso facto "failed," and this should be an irrebuttable presumption. However, only "failed" stations should qualify for the waiver -- not "failing" stations -- since the Commission should not be required to make the subjective decision

whether a station is sufficiently "failing" to qualify; the "failed" station standard permits the bankruptcy mechanism to make that determination objectively for the Commission.

9. On the other hand, where the basis for "failed" station status is the fact that a station has been silent for a substantial period of time, SCC commends as a policy model the Commission's recent decision in Spectrum Radio, Inc., FCC 97-13, released February 4, 1997. There, the Commission refused to treat two years of silence as grounds for a presumptive waiver of the one-to-a-market rule because there was clear evidence that the station's silent status was "the result of a decision to sell the station rather than reconstruct the station, not the result of the financial inability to resume operations". Id. at ¶13. In other words, SCC believes that even silence for a substantial period of time should create only a rebuttable presumption of being a "failed" station.

V. The Commission Should Not Make Program Promises a Duopoly Waiver Ground

10. In ¶¶'s 54-55 of the Second Notice, the Commission asks whether an undertaking (a) to provide public interest programming that would not be offered if the stations were separately owned or (b) to provide programming which serves the needs of an underserved segment of the local market should be a valid ground for a duopoly waiver. SCC applauds the Commission's desire to encourage such public interest programming; however, SCC strongly believes that broadcasters should meet their programming responsibilities without any special incentives. On balance, SCC opposes using programming promises as a duopoly waiver criterion because evaluating such promises would involve the Commission too much in program content judgments, and because the promises would be largely unenforceable after grant.

VI. SCC Favors Changes in the One-to-a-Market Waiver Criteria

11. The Second Notice (¶¶'s 59-79) proposes a number of potential liberalizations of the one-to-a-market waiver criteria. At minimum, consistent with the 1996 amendments to the Communications Act of 1934, the Commission proposes to issue across-the-board one-to-a-market cross-ownership grants in the Top 50 markets (instead of the present Top 25), where there are at least 30 separate broadcast "voices". However, the Second Notice is sketchy about all other policy changes, such as modifying the current five one-to-a-market waiver criteria.

12. Following are SCC's comments on the Second Notice's four options to further extend the one-to-a-market rule (¶¶'s 67-77):

(1) Whether to extend the presumptive one-to-a-market waiver policy to any size TV market which meets the 30 independent voices test?

SCC recommends that the Commission should presumptively grant one-to-a-market waivers, regardless of market size, where 30 or more independent voices exists. The 30-voice test has served the Commission and the public well over a number of years as a "bright line" test for presumptive competition and diversity, and SCC believes that it should be used to the fullest extent possible in evaluating one-to-a-market waiver requests, regardless of market size.

(2) Whether to extend the presumptive waiver policy to entities that seek to own more than one FM and/or AM radio station?

SCC believes that if the 30-independent-voice test is met, the Commission should allow the purchase of as many AM and FM radio stations as the duopoly rules and waivers thereof permit.

(3) Whether to reduce the number of independent voices that must remain after a transaction?

SCC opposes reducing the minimum number of independent voices to less than 30. Smaller numbers (such as 15 or 20 voices) could produce anomalous results in which there would be too few stations of a particular type within a market to permit true competition (such as a 20-voice market with three TV stations in which two of the TV stations become commonly owned). However, the Commission may wish to enlarge its definition of independent voices to include cable systems, wireless cable systems, Open Video Systems, and LPTV stations that originate programming or carry non-broadcast program services, and, perhaps, even daily and weekly newspapers and local magazines. This enlargement would both create a more accurate media competition picture within a market and increase the number of markets that have 30 independent voices. Where there are fewer than 30 independent voices, SCC urges that the Commission's well-established procedure for case-by-case examination of media provides the best test for adequate competition and diversity within a market.

(4) Whether to refine the current one-to-a-market waiver criteria to be more effective in protecting competition and diversity?

SCC recommends that the current five one-to-a-market waiver criteria should be revised by eliminating the showings concerning cost savings, programming and service benefits, and types of facilities involved. Historically, waiver decisions have not turned on these factors, and they clutter the record. SCC believes that sole emphasis should be placed on the following three waiver factors to promote competition and diversity: (1) number of media outlets already owned in the market by the applicant; (2) any financial difficulties involving the station(s) being purchased; and (3) data concerning the level of diversity, competition, and unusual geography within the market.

VII. Conclusion

13. The Commission's review of its TV ownership rules in the Second Notice is very timely. SCC strongly believes that, in certain respects, the rules have been too restrictive and that certain liberalizations -- along the lines described above -- are necessary and appropriate.

WHEREFORE, in light of the foregoing, SCC respectfully requests that the Commission should amend its TV ownership rules in accordance with the above Comments.

Respectfully submitted,

SHOCKLEY COMMUNICATIONS CORPORATION

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Dated: February 7, 1997